IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 614 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ORIENTAL INSURANCE CO LTD.

Versus

BHIKHIBEN W/O VENABHAI VECHATBHAI PATEL

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Appearance:

MR RK MISHRA for appellant

..... for Respondent No. 1-6

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CORAM : MR.JUSTICE N.G.NANDI

and

MR.JUSTICE J.R.VORA

Date of decision: 04/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This Appeal under Section 173 of the Motor Vehicles Act is directed against the award and judgment dated 30.10.2001 passed in Motor Accident Claim Petition No. 137 of 1992 by the Motor Accident Claims Tribunal (Auxiliary) District Sabarkantha at Himatnagar.

2. Heard Shri R.K. Mishra, learned Advocate for the appellant. Mr.Mishra, learned Advocate for the appellant placed for our perusal the copy of panchnama Exh.36 and copy of postmortem notes. The factual aspect, namely, the scooter driven by the victim at the time of the accident ahead of the offending motor truck and both the vehicles were proceeding in the same direction and the scooterist having been knocked down by the offending motor truck coming from behind, are not disputed. In view of this admitted factual position, and negligence being contributory negligence as the copy of panchnama is placed on record, there is no need to call for the record and proceedings of the trial court as the income of the deceased at the time of accident is also not disputed by the learned advocate for the appellant.

3. The deceased aged about 30 years, earning Rs. 2,500/- per month, was working as an Assistant Teacher in the school. The deceased was driving the scooter at the relevant time and both the vehicles were proceedings in the same direction, the offending motor truck came from behind and dashed with the scooter from behind and the scooterist was knocked down and the injuries sustained by the scooterist culminated into his death.

4. It is submitted by Mr. Mishra, learned advocate for the appellant that the scooterist should have been held contributory negligent in the accident. Admittedly, the scooter and the offending motor truck both were proceeding in the same direction and the motor truck came from behind and knocked down the scooterist. The panchnama also suggests the position of scooter at the time of accident and the motor truck. It may also be seen that the driver of the truck has not been examined as witness before the Tribunal. From this, it does not appear that the scooterist can be regarded negligent was not responsible and no interference is called for holding the driver of the motor truck is not solely responsible for the accident.

5. As far as the income of the deceased is concerned, he was earning Rs. 2,500/- per month which fact is not disputed. Applying the multiplier of 15

considering the age of the deceased to be 31 years at the time of accident, considering the future income and considering the future uncertainties and personal expenses of the deceased, income of the deceased has been rightly estimated at Rs. 2,500/- p.m. The assessment of income arrived at by the Tribunal is as per the settled legal position and the structrued formula. Looking to the admitted income at the time of accident, it cannot be said to be in any manner improper or on the higher side. Under the circumstances, the appellant has not been able to show any point which calls for consideration in the appeal and the appeal being devoid of substance, is liable to be summarily dismissed.

6. In the result, the appeal stands dismissed summarily at the admission stage.

7. In view of the above order, Civil Application No. 2314/2002 does not survive and is disposed of as having become infructuous.

(N.G. Nandi, J.)

(J.R. Vora, J.)

p.n.nair